



**OFFICE OF THE GOVERNOR**

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BILL ANOATUBBY  
GOVERNOR

July 10, 2017

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

To whom it may concern:

Enclosed are the comments from the Chickasaw Nation regarding WT Docket No. 17-79, "Notice of Proposed Rulemaking for Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment."

We appreciate the opportunity to provide feedback regarding this important topic in which we share a common interest.

If you have any questions please contact Mr. Kirk Perry, executive officer of historic preservation, at (580) 272-5323 or at [kirk.perry@chickasaw.net](mailto:kirk.perry@chickasaw.net).

Sincerely,

*Bill Anoatubby*

Bill Anoatubby, Governor  
The Chickasaw Nation

cc: [www.fcc.gov](http://www.fcc.gov) public comment

**Comments of the Chickasaw Nation on  
the “Notice of Proposed Rulemaking for Accelerating Wireless Broadband  
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Under Section 106 of the National Historic Preservation Act (NHPA) tribal governments are given the ability to consult with the Federal Communications Commission (FCC) in the area of telecommunications. As the FCC deliberates procedural changes, including timeframes, fee schedules and tribal areas of interest, it is important that these deliberations take place within the context of government-to-government consultation as the Section 106 responsibilities cannot be delegated to the applicant. The Chickasaw Nation supports the acceleration of wireless broadband deployment with the emerging 5G technology by the wireless telecommunications industry. We can realize the benefits of modernizing the existing Tower Construction Notification System (TCNS) to meet the needs of all parties involved. Adopting individual tribal agreements with the FCC or tribes signing onto the nationwide Programmatic Agreement may be the best way to expedite the review process for small cell facilities. When the agency follows 36 CFR PART 800, there are no barriers.

Because the Chickasaw Nation was removed from its aboriginal homeland, an area in four southeastern states where the tribe once lived, many of our significant sites under review are far removed by hundreds of miles. These sites are very important to us. The way we must consult on distant sites relies heavily on the TCNS and our internal use of geographic information system maps that contain very robust data. It is impractical for the Chickasaw Nation to monitor sites, for example. For reviews in the present-day Chickasaw Nation we could probably do a better job of evaluating potential impacts to our environment and cultural sites than could outside cell tower company contractors, although we have no source of funding for these activities. Our responses below can be different when NHPA reviews are conducted in Oklahoma or in distant states of Alabama, Mississippi, Tennessee and Kentucky.

**A. Streamlining State and Local Review (and Tribal)**

1. “Deemed Granted” Remedy for Missing Shot Clock Deadlines  
We do not believe a “deemed granted” remedy is necessary. Expedited review is possible when the complete package of necessary information is provided by the

industry and the shot clock should not be started until such information has been provided. We remind the agency that our project reviews are an unfunded federal mandate imposed by FCC on the Chickasaw Nation where our infrastructure gains no benefit. Our aboriginal homelands are at least 500 miles away from our present location.

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2. Reasonable Period of Time to Act on Applications

We agree that some structures need more scrutiny than others, depending on the scale and location of the project. Developing a timeline that allows for more time on these complex projects is reasonable. However, Section 106 Regulations require that the agency provide documentation to the SHPO and tribes for review and “barring any objections in 30 days, proceeds with its undertaking” with the understanding that tribes may enter consultation at any point during the undertaking prior to the issuance of a permit by the agency per the regulations in the 106 process.

3. Moratoria

The Chickasaw Nation does not exercise moratoria on processing applications.

B. Reexamining National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) Review

1. Background

NHPA Section 106 review is essential for the Chickasaw Nation to be able to protect sacred sites in our aboriginal homelands. NEPA states that the 106 process must be completed and consultation can begin early in the process before decisions are made, which is often not followed by agencies. We receive invitations for review of NEPA statements that at times do not include information on determinations of impacts on historic properties that are important. In distant homelands we do not maintain data on environmental categories.

2. Updating our Approach to the NHPA and NEPA

a. Need for Action

The current TCNS process provides an opportunity for tribes affected by the deployment of wireless technology to assess proposed sites and



respond directly to the wireless industry. It also provides a thorough, functional solution to the FCC's obligation to consult individually with tribes. TCNS has been a model for how the federal government, tribal nations and industry can work together in a meaningful way that encourages infrastructure development while respecting tribal sovereignty through consultation.

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b. Process Reforms

i. Tribal Fees

At this time the Chickasaw Nation does not charge fees for reviewing industry applications. However, as sovereign governments, it is appropriate for tribal nations to assess reasonable fees. We support the tribes that utilize that option. Payment should be appropriate when tribes fulfill the role of consultants or contractors when asked for "specific information and documentation" regarding site location. Independent monitors who function on behalf of tribes should be required to meet established standards and provide applicants with reports. For reviews in distant homelands where sites remain very important, it is not practical for tribal employees to travel long distances to monitor sites. We have no funds for this expense.

Geographical Areas of Interest

By allowing for tribes to map out their areas of interest, and stay involved in the TCNS process, tribes are able to give advice on the infrastructure's impact to cultural and historic properties and potentially slightly change construction plans to avoid historic properties. We utilize a robust Geographic Information System (GIS) during our reviews. We have provided GIS maps in reply to cell tower companies with our areas of interest, a process which is currently being used in the TCNS. However, it is important that unique tribal areas of interest are not viewed as static, just as economic development, technology and the Internet has changed the work of the FCC, it has changed the work of our historic preservation program. Since the inception of the TCNS over a decade ago, we have been more active in researching our aboriginal

homelands in Mississippi, Tennessee, Alabama and Kentucky from which we were removed.

**Retention of Information on Areas Where Concerns Were Raised**  
We are understandably concerned about the confidentiality of our cultural and historic properties. The FCC, as the federal trustee, has an obligation to protect the confidentiality of these sites. Because industry does not have this same obligation, the FCC should not share the location of sacred sites or protected properties unless it has secured our specific written tribal consent.

**Multiple Tribal Nations Duplicative Review**

We understand that multiple tribes removed from the same areas in their aboriginal homelands review the same project, and that can seem duplicative to

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the industry. However, the historic preservation concerns of one tribe cannot be considered the same historic preservation concerns of another tribe as each one has special expertise in the evaluation of sites important to its culture. This important ability is provided by the NHPA.

We strongly oppose revisions that would allow applicants to self-certify Section 106 compliance. The role of the FCC is to protect the varied interests of historic preservation of tribes to which it is a trustee. Allowing for applicants to self-certify compliance is in direct violation of the National Historic Preservation Act and the trust responsibility the government has to tribal nations.

**ii. Other NHPA Process Issues**

**Batching**

Any FCC action on batching applications for small cells should be reasonable, considering similar localities and limited to less than 20 sites in one batch. Additionally, batching of applications must allow for tribes to have the option to separate any sites out of the batch, as one site may be more concerning than others in the same application.

**c. NHPA Exclusions for Small Facilities**



Considering that many installations of small facilities will not disturb the ground, these exclusions could be well received in consultation. We have worked with other federal agencies to develop memorandums of understanding/agreement to address specific exclusions and are willing to develop a similar document with the FCC. However, if the ground is to be disturbed in any way we will need the opportunity to identify effects on historic properties.

i. Pole Replacements

Pole replacements are excluded from Section 106 Review under the NHPA if they meet the definition of a "tower." However, we do not support exclusions for pole replacements that substantially increase in size or disturb ground. If a pole replacement site has never undergone Section 106 review it should be subject to review.

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ii. Rights-of-Way

Rights-of-way cannot be excluded from review under Section 106. During construction of the interstate highway system prior to passage of the NHPA in 1966 and other laws, the federal government did not consult with tribes. A very important Chickasaw cultural site was severely damaged during this time. Graves were destroyed. Therefore our ability to consult on highway projects at this is very important. Thus, existing rights-of-way might contain many historic, cultural and archeological properties as they can be directly overlying prehistoric tribal routes which were used as travel corridors. Instead, improvements in technology should be applied to engage in Section 106 consultation for the deployment of this less intrusive infrastructure and equipment within historic rights-of-way, since numerous alternatives can be developed that will avoid and minimize the adverse effects on a case-by-case basis.

iii. Collocations

We do not support the proposed exemption of review for structures that are located between 50 and 250 feet from the boundary of any historic district. Collocation minimizes the need to build new structures such as cell towers that have adverse visual effects.

However, it is important to ensure that such collocation proposals are reviewed by tribal historic preservation offices to confirm that they are designed in a manner that avoids and minimizes any visual and physical harm to the site. Collocations in urban ROWs or indoors with no ground disturbance could potentially be excluded.

d. Scope and Undertaking and Action

We support the FCC's continued role in ensuring compliance on all proposed projects. We do not believe site-specific licenses should be distinguished from geographic area licenses.

3. Collocations on Twilight Towers

We support the development of a mechanism that could bring twilight towers into compliance with Section 106 retroactively, so that they can be used in the future for collocation. However, that mechanism should not be based on a retroactive exemption for these structures from Section 106 compliance. As stated in 2.c. above, these actions can be contained within an MOA or MOU.